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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

MAJOR LEAGUE BASEBALL PLAYERS  
ASSOCIATION,

Plaintiff,

v.

BRENT POURCIAU and TOP VELOCITY, LLC,

Defendants.

CASE NO. 4:19-cv-04912-YGR

**STIPULATED JUDGMENT**

Courtroom: 1, Floor 4

*Honorable Yvonne Gonzalez Rogers*

**STIPULATED JUDGMENT**

WHEREAS, Plaintiff, Major League Baseball Players Association (“MLBPA”) and Defendants Top Velocity, LLC (“Top Velocity”) and Brent Pourciau (“Pourciau,” and collectively “Top Velocity Defendants”), by and through their attorneys of record, have entered into a final and binding settlement agreement that resolves all disputed issues in the above-captioned matter (the “Action”), in which the Top Velocity Defendants admit liability and agree to pay fair and reasonable consideration in exchange for mutual releases, as set forth in the parties’ settlement agreement; and

WHEREAS, the parties, pursuant to their settlement agreement, have stipulated to be bound by all of the terms, conditions, representations, warranties, and covenants incorporated into this Final Judgment; and

WHEREAS, this Court has reviewed the pleadings and filings in the Action and for good cause shown,

It is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of the Action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendants.

2. MLBPA is the exclusive group licensing agent for current Major League baseball players (“Players”) and has been granted the exclusive right to use, license, and sublicense the names, nicknames, likenesses, signatures, pictures, numbers, playing records, biographical data and other personal indicia of the Players (collectively, the “Attributes”) for the purposes of any commercial, marketing and/or promotional activity (collectively, the “MLBPA Rights”), including the use of the Attributes of three or more Players by an entity or brand in a given year.

3. The Top Velocity Defendants each acknowledge MLBPA as the sole and exclusive holder of the MLBPA Rights.

4. The Top Velocity Defendants wrongfully used the Attributes of MLBPA’s members in Top Velocity Defendants’ programs, materials, products and services (collectively, the “Programs”), and in advertising, marketing, promoting, settling, distributing, and soliciting

purchases, and in online, social, and other media (collectively, to “Market and/or Sell” and formatives thereof), of Top Velocity Defendants’ Programs, including without limitation in the following examples, and did so without having obtained a license for such use from MLBPA or any Player:

David Robertson (Twitter: <https://twitter.com/gritnj/status/957395244018003970>)  
 Cole Hamel (YouTube: <https://www.youtube.com/watch?v=eWKi21gQYxY>)  
 Chris Archer (<https://www.topvelocity.net/chris-archer-pitching-analysis/>)  
 Jake Arrieta (<https://www.topvelocity.net/jake-arrieta-workout-program/>)  
 Archie Bradley (<https://www.topvelocity.net/trunk-delay-pitching/>)  
 Aroldis Chapman (<https://www.topvelocity.net/aroldis-chapman-throws-106mph-sidearm-pitching/>  
<https://www.topvelocity.net/top-10-tips-to-throwing-harder/>)  
 Yu Darvish (<https://www.topvelocity.net/yu-darvish-pitching-analysis/>)  
 Wade Davis (<https://www.topvelocity.net/power-vs-placement-herrera-davis-holland-the-baseball-codeep4/>)  
 Ken Giles (<https://www.topvelocity.net/how-does-ken-giles-throw-101mph-perfect-arm-path/>)  
 Sonny Gray (<https://www.topvelocity.net/sonny-gray-pitching-analysis/>)  
 Matt Harvey (<https://www.topvelocity.net/met-pitchers-continue-to-have-arm-problems/>)  
 Kyle Hendricks (<https://www.topvelocity.net/kyle-hendricks-pitching-tips-mechanics/>)  
 Felix Hernandez (<https://www.topvelocity.net/felix-hernandez-mechanics-importance-power-weight-ratio/>)  
 Kelvin Herrera (<https://www.topvelocity.net/power-vs-placement-herrera-davis-holland-the-baseball-codeep4/>)  
 Greg Holland (<https://www.topvelocity.net/power-vs-placement-herrera-davis-holland-the-baseball-codeep4/>)  
 Joe Kelly (<https://www.topvelocity.net/joe-kelly-throws-101mph-trap-bar-deadlifts/>)  
 Matt kemp (<https://www.topvelocity.net/power-hitting-workouts-mike-trout-matt-kemp/>)  
 Clayton Kershaw (<https://www.topvelocity.net/clayton-kershaw-pitching-mechanics/>)  
 Carlos Martinez (<https://www.topvelocity.net/keeping-legs-in-line-with-plate-increases-velocity/>)  
 Mike Minor (<https://www.topvelocity.net/3x-90plus-members/3x-professional-pitchers/>)  
 Yadier Molina (<https://www.topvelocity.net/top-10-ways-to-improve-catchers-arm-strength/>  
<https://www.topvelocity.net/2x-sub-2-0-catcher-pop-time-program/>  
<https://www.topvelocity.net/yadier-molina-pop-time-secrets-overhead-squats/>)  
 Matt Moore (<https://www.topvelocity.net/matt-moores-ucl-damage-linked-to-possible-excessive-tilt/>)  
 James Paxton (<https://www.topvelocity.net/100mph-pitcher-james-paxton-and-how-to-build-mass/>)  
 Hunter Pence (<https://www.topvelocity.net/how-hunter-pence-throw-hard-and-deadlifts-made-me-short/>)  
 Salvador Perez (<https://www.topvelocity.net/top-10-workout-programs-for-catchers/>)  
 Jose Quintana (<https://www.topvelocity.net/scapular-loading-velocity/>)  
 Chris Sale (<https://www.topvelocity.net/why-chris-sales-sidearm-slot-will-shorten-his-career/>)  
 Max Scherzer (<https://www.topvelocity.net/pitch-like-max-scherzer-and-develop-hyper-mobility/>)  
 Stephen Strasburg (<https://www.topvelocity.net/scapular-loading-velocity/>  
<https://www.topvelocity.net/stephen-strasburg-injury-prediction-and-illegal-peptides/>  
<https://www.topvelocity.net/prevent-early-trunk-rotation-pitching/>)  
 Marcus Stroman (<https://www.topvelocity.net/top-10-steps-pitch-like-marcus-stroman/>)  
 Mike Trout (<https://www.topvelocity.net/power-hitting-workouts-mike-trout-matt-kemp/>)

1 Adam Wainwright ([https://www.topvelocity.net/adam-wainwright-dead-arm-syndrome-the-](https://www.topvelocity.net/adam-wainwright-dead-arm-syndrome-the-baseball-code-ep-1/)  
2 [baseball-code-ep-1/](https://www.topvelocity.net/adam-wainwright-dead-arm-syndrome-the-baseball-code-ep-1/))

3 Zack Wheeler ([https://www.topvelocity.net/how-to-best-use-stride-length-to-increase-pitching-](https://www.topvelocity.net/how-to-best-use-stride-length-to-increase-pitching-velocity/)  
4 [velocity/](https://www.topvelocity.net/how-to-best-use-stride-length-to-increase-pitching-velocity/))

5 5. Each unlicensed use by the Top Velocity Defendants of the Attributes as described  
6 in Paragraph 4 violated the MLBPA Rights.

7 6. The Top Velocity Defendants represent, warrant, and covenant that they will not,  
8 separately or collectively or in combination with any third party, now or in the future, dispute,  
9 question, or seek to challenge or invalidate the title, interest or any rights of MLBPA in and to the  
10 MLBPA Rights.

11 7. The Top Velocity Defendants represent, warrant, and covenant that, as of the date of  
12 this Stipulated Judgment, they and each of them have ceased any and all use of the Attributes of  
13 any Player to Market and/or Sell, and all Marketing and Sales of any product, program, brand,  
14 service and/or other commercial and/marketing content that uses any Attributes of any Player,  
15 including without limitation in the manners shown in the examples in Paragraph 4 and in  
16 MLBPA's Complaint filed in this action. The aforesaid representations, warranties, and covenants  
17 of the Top Velocity Defendants is material, and MLBPA is relying on such representation,  
18 warranty, and covenant in agreeing to resolve the current dispute.

19 8. The Top Velocity Defendants represent, warrant, and covenant that, from the date of  
20 this Stipulated Judgment forward, they and each of them will not use any Attributes of any Player  
21 to Market and/or Sell, and/or Market and/or Sell any product, program, brand, service and/or other  
22 commercial or marketing content that uses any Attributes of any Player, including without  
23 limitation in the manners shown in the examples in Paragraph 4 without having obtained the  
24 express written permission and approval from MLBPA in each instance to do so. The aforesaid  
25 representation, warranty, and covenant of the Top Velocity Defendants is material, and MLBPA is  
26 relying on such representation, warranty, and covenant in agreeing to resolve the current dispute.

27 In consideration of the terms and provisions set forth above and the stipulation of the  
28 parties,


1 JUDGMENT IS HEREBY GRANTED in favor of Plaintiff MLBPA and against the Top  
2 Velocity Defendants as set forth herein.

3 Each party shall bear its own costs and attorneys' fees as set forth in the parties' settlement  
4 agreement.

5 The Court hereby retains jurisdiction over this matter, pursuant to the request of the parties  
6 in their settlement agreement, to enforce the terms of that agreement pursuant to the terms and  
7 procedures set forth therein.

8 **IT IS SO ORDERED.**

9  
10 Dated: February 18, 2020

  
YVONNE GONZALEZ ROGERS  
United States District Judge

1 The parties, by their respective counsel, hereby consent to the terms and conditions of this  
2 Stipulated Judgment as set forth above.

3  
4 Dated: February 13, 2020

MICHAEL RUBIN  
P. CASEY PITTS  
Altshuler Berzon LLP

6 HEATHER CHASE (*pro hac vice*  
7 *forthcoming*)  
Major League Baseball Players Association

8  
9 By: /s/ Michael Rubin  
Michael Rubin

10 *Attorneys for Plaintiff*  
11 *Major League Baseball Players Association*

12 Dated: February 13, 2020

MICHAEL R. BROOKS  
Kolesar & Leatham

14  
15 By: /s/ Michael R. Brooks  
Michael R. Brooks

16 *Attorney for Defendants*  
17 *Brent Pourciau and Top Velocity, LLC*

**SIGNATURE ATTESTATION**

Pursuant to Local Civil Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from each of the above signatories.

Dated: February 13, 2020

Altshuler Berzon LLP

By: /s/ Michael Rubin  
Michael Rubin